AMENDED IN ASSEMBLY AUGUST 8, 2008

AMENDED IN ASSEMBLY JULY 14, 2008

AMENDED IN ASSEMBLY JULY 5, 2007

AMENDED IN ASSEMBLY JUNE 26, 2007

AMENDED IN SENATE APRIL 30, 2007

AMENDED IN SENATE APRIL 18, 2007

SENATE BILL No. 434

Introduced by Senator Romero

February 21, 2007

An act to amend Section 14126.023 of, and to add Section 14126.034 to, the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

SB 434, as amended, Romero. Medi-Cal: long-term care reimbursement: ratesetting methodology.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, and under which qualified low-income individuals receive health care services. The Medi-Cal Long-Term Care Reimbursement Act requires the department to implement a facility-specific ratesetting system, using a cost-based reimbursement rate methodology, and to update these rates annually. ~~Under existing law, the methodology is required to reflect the sum of the projected cost of specified cost categories and passthrough costs, including a labor cost category.~~

~~This bill would require labor costs to be determined by facility payroll data, submitted electronically to the department on a quarterly basis, as prescribed.~~

This bill would require the department, no later than February 1, 2009, to convene a workgroup of interested stakeholders to make recommendations to the Legislature to ensure compliance with the provisions creating the reimbursement methodology. The bill would specify the membership and responsibilities of the workgroup, including submitting a report of its recommendations to the Legislature no later than 6 months after commencement of the workgroup. It would also designate the duties of the department with respect to the workgroup and its recommendations. This bill would authorize the workgroup to continue meeting for up to one year after issuing its recommendations, as specified.

Existing law requires compliance by each facility with state laws and regulations regarding staffing levels to be documented annually either through facility cost reports, or through a specified annual licensing inspection process.

The bill would require the department to develop a plan, in consultation with the above described stakeholder workgroup, for skilled nursing facilities to report staffing information based on additional data, including, but not limited to, payroll data, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 14126.023 of the Welfare and Institutions Code is amended to read:

14126.023. (a) The methodology developed pursuant to this article shall be facility specific and reflect the sum of the projected cost of each cost category and passthrough costs, as follows:

(1) Labor costs limited as specified in subdivision (c).

(2) Indirect care nonlabor costs limited to the 75th percentile.

(3) Administrative costs limited to the 50th percentile.

(4) Capital costs based on a fair rental value system (FRVS) limited as specified in subdivision (d).

(5) Direct passthrough of proportional Medi-Cal costs for property taxes, facility license fees, new state and federal mandates,

caregiver training costs, and liability insurance projected on the prior year's costs.

(b) The percentiles in paragraphs (1) through (3) of subdivision (a) shall be based on annualized costs divided by total resident days and computed on a specific geographic peer group basis. Costs within a specific cost category shall not be shifted to any other cost category.

(c) The labor costs category shall be comprised of a direct resident care labor cost category, an indirect care labor cost category, and a labor driven operating allocation cost category, as follows:

(1) Direct resident care labor cost category which shall include all labor costs related to routine nursing services including all nursing, social services, activities, and other direct care personnel. These costs shall be limited to the 90th percentile.

(2) Indirect care labor cost category which shall include all labor costs related to staff supporting the delivery of patient care including, but not limited to, housekeeping, laundry and linen, dietary, medical records, inservice education, and plant operations and maintenance. These costs shall be limited to the 90th percentile.

(3) Labor driven operating allocation shall include an amount equal to 8 percent of labor costs, minus expenditures for temporary staffing, which may be used to cover allowable Medi-Cal expenditures. In no instance shall the operating allocation exceed 5 percent of the facility's total Medi-Cal reimbursement rate.

(d) The capital cost category shall be based on a FRVS that recognizes the value of the capital related assets necessary to care for Medi-Cal residents. The capital cost category includes mortgage principal and interest, leases, leasehold improvements, depreciation of real property, equipment, and other capital related expenses. The FRVS methodology shall be based on the formula developed by the department that assesses facility value based on age and condition and uses a recognized market interest factor. Capital investment and improvement expenditures included in the FRVS formula shall be documented in cost reports or supplemental reports required by the department. The capital costs based on FRVS shall be limited as follows:

(1) For the 2005–06 rate year, the capital cost category for all facilities in the aggregate shall not exceed the department's estimated value for this cost category for the 2004–05 rate year.

(2) For the 2006–07 rate year and subsequent rate years, the maximum annual increase for the capital cost category for all facilities in the aggregate shall not exceed 8 percent of the prior rate year's FRVS cost component.

(3) If the total capital costs for all facilities in the aggregate for the 2005–06 rate year exceeds the value of the capital costs for all facilities in the aggregate for the 2004–05 rate year, or if that capital cost category for all facilities in the aggregate for the 2006–07 rate year or any rate year thereafter exceeds 8 percent of the prior rate year's value, the department shall reduce the capital cost category for all facilities in equal proportion in order to comply with paragraphs (1) and (2).

(e) For the 2005–06 and 2006–07 rate years, the facility specific Medi-Cal reimbursement rate calculated under this article shall not be less than the Medi-Cal rate that the specific facility would have received under the rate methodology in effect as of July 31, 2005, plus Medi-Cal's projected proportional costs for new state or federal mandates for rate years 2005–06 and 2006–07, respectively.

(f) The department shall update each facility specific rate calculated under this methodology annually. The update process shall be prescribed in the Medicaid state plan, regulations, and the provider bulletins or similar instructions described in Section 14126.027, and shall be adjusted in accordance with the results of facility specific audit and review findings in accordance with subdivisions (h) and (i).

(g) The department shall establish rates pursuant to this article on the basis of facility cost data reported in the integrated long-term care disclosure and Medi-Cal cost report required by Section 128730 of the Health and Safety Code for the most recent reporting period available, and cost data reported in other facility financial disclosure reports or supplemental information required by the department in order to implement this article. ~~Labor costs shall be determined by facility payroll data that facilities shall submit electronically to the department on a quarterly basis, in a uniform format established by the department. The facility reports shall specify the category of work an employee performs, such as whether the employee is a registered nurse, licensed vocational nurse, or certified nurse assistant, and shall provide daily resident census data.~~

(h) The department shall conduct financial audits of facility and home office cost data as follows:

(1) The department shall audit facilities a minimum of once every three years to ensure accuracy of reported costs.

(2) It is the intent of the Legislature that the department develop and implement limited scope audits of key cost centers or categories to assure that the rate paid in the years between each full scope audit required in paragraph (1) accurately reflects actual costs.

(3) For purposes of updating facility specific rates, the department shall adjust or reclassify costs reported consistent with applicable requirements of the Medicaid state plan as required by Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations.

(4) Overpayments to any facility shall be recovered in a manner consistent with applicable recovery procedures and requirements of state and federal laws and regulations.

(i) (1) On an annual basis, the department shall use the results of audits performed pursuant to subdivision (h), the results of any federal audits, and facility cost reports, including supplemental reports of actual costs incurred in specific cost centers or categories as required by the department, to determine any difference between reported costs used to calculate a facility's rate and audited facility expenditures in the rate year.

(2) If the department determines that there is a difference between reported costs and audited facility expenditures pursuant to paragraph (1), the department shall adjust a facility's reimbursement prospectively over the intervening years between audits by an amount that reflects the difference, consistent with the methodology specified in this article.

(j) For nursing facilities that obtain an audit appeal decision that results in revision of the facility's allowable costs, the facility shall be entitled to seek a retroactive adjustment in its facility specific reimbursement rate.

(k) *(1)* Compliance by each facility with state laws and regulations regarding staffing levels shall be documented *annually either* through facility cost reports, including supplemental reports, *or* through the annual licensing inspection process specified in Section 1422 of the Health and Safety Code~~, and through quarterly submission of payroll data pursuant to subdivision (g)~~.

(2) To ensure timely and accurate information on skilled nursing facility staffing, the department shall develop a plan, in consultation with the stakeholder workgroup created pursuant to Section 14126.034, for skilled nursing facilities to report staffing information based on additional data, including, but not limited to, payroll data in a uniform electronic format that includes whether the employee is a registered nurse, licensed vocational nurse, or a certified nurse assistant and that provides daily resident census data.

SEC. 2. Section 14126.034 is added to the Welfare and Institutions Code, to read:

14126.034. (a) (1) No later than February 1, 2009, the department shall convene a workgroup of interested stakeholders to make recommendations to the department to ensure compliance with the intent of this article, as provided in subdivision (a) of Section 14126.02. *The stakeholder workgroup shall also work with the department to ensure compliance with paragraph (2) of subdivision (k) of Section 14126.023.* The stakeholder workgroup shall meet a minimum of six times. Subcommittees may be convened and meet as necessary.

(2) (A) Interested stakeholders shall include consumers or their representatives, or both, including current or former skilled nursing facility residents and family members of current or former skilled nursing facility residents, or both, seniors or their representatives, or both, skilled nursing facility representatives, labor representatives, and people with disabilities and disability rights advocates.

(B) A stakeholder workgroup of 20 members shall be convened representing interested stakeholders from the groups listed in subparagraph (A), with members selected from each of the following interests:

(i) Ten consumer representatives.

(ii) Five skilled nursing facility labor representatives.

(iii) Five skilled nursing facility representatives.

(C) The Secretary of Health and Human Services shall appoint interested stakeholders within each of the areas of interest in subparagraph (B).

(D) The stakeholder workgroup shall also include nonvoting representatives from the department, the Office of the State Long-Term Care Ombudsman, the State Department of Public

Health, and the Office of Statewide Health Planning and Development, with members appointed by their respective directors, or his or her designee, and may also include legislative staff, academics, and other state department representatives, including, but not limited to, representatives from the California Department of Aging and the State Department of Developmental Services.

(3) (A) Each stakeholder workgroup meeting shall be facilitated by a facilitator from an organization independent of the department and any of the stakeholder organizations, to the extent that funding is made available for this purpose. If no funds are made available for this purpose, the department shall chair the stakeholder workgroup meetings.

(B) The consumers, skilled nursing facility labor, and skilled nursing facility stakeholder workgroup members shall each select one representative who will meet with the department and the facilitator to develop meeting agendas after having solicited input from each representative's respective stakeholder group.

(C) To the extent that foundation funding is made available, stakeholder workgroup members shall receive reimbursement for any actual, necessary, and reasonable expenses incurred in connection with their duties as members of the workgroup.

(4) The department shall assign staff as needed to assist the stakeholder workgroup in carrying out its responsibilities.

(5) In developing recommendations, the stakeholder workgroup shall consider the structure of, and potential changes to, the facility-specific ratesetting system, developed pursuant to Section 14126.023, that may improve the quality of resident care. The stakeholder workgroup members may take into consideration the following factors, or any other factors deemed relevant to ensure the quality of resident care:

(A) Skilled nursing facility staffing levels, including, but not limited to, compliance with existing staffing requirements.

(B) Skilled nursing facility staff wages and benefits, including, but not limited to, geographic disparities in wages and benefits.

(C) Skilled nursing facility staff turnover and retention.

(D) Deficiency reports issued as a result of both surveys and complaint investigations, to the extent that they may be disclosed as public records, and the enforcement actions taken under federal certification and state licensing laws and regulations.

(E) Skilled nursing facility compliance with assessments to ascertain residents' preference for, and ability to return to, the community, as required by Section 1418.81 of the Health and Safety Code, including necessary followthrough to ensure care necessary for a resident to transition out of skilled nursing facility care and into the community.

(F) Use of the ratesetting system to increase compliance with the United States Supreme Court decision in Olmstead v. L.C. by Zimring (1999) 527 U.S. 581.

(G) Health care efficiency.

(H) Health care safety.

(I) The extent to which a pay-for-performance program may contribute to improving the quality of resident care and appropriate performance measures for a pay-for-performance program.

(J) Preventable emergency room visits and rehospitalizations.

(K) Resident and family satisfaction with care and resident's quality of life, including improvements on ways to measure satisfaction.

(L) Recommendations for methods to evaluate the effectiveness of the facility-specific ratesetting system, defined in Section 14126.023, in meeting the intent of this article, pursuant to Section 14126.02.

(M) Additional quality measures, including, but not limited to, adequate nutrition and ready availability of durable medical equipment.

(6) In addition to recommendations provided during stakeholder workgroup meetings, individual members of the stakeholder workgroup and any other interested stakeholders may provide to the department any additional written recommendations on the items considered in the stakeholder workgroup meetings.

(7) The department shall provide technical assistance to the stakeholder workgroup to evaluate the feasibility of its recommendations so that the stakeholder workgroup will have the benefit of the department's analysis when discussing and reviewing proposed recommendations.

(8) The department shall review and analyze all recommendations from the stakeholder workgroup, individual workgroup members, and any other interested stakeholders, and, no later than six months from the enactment of this section, with

the approval of the workgroup, the department shall deliver to the Legislature, the following:

(A) The complete recommendations of the stakeholder workgroup, individual workgroup members, and any other interested stakeholders.

(B) The department's analysis of the feasibility to implement the proposed recommendations.

(9) (A) The stakeholder workgroup may continue to meet to carry out its responsibilities pursuant to paragraph (5) for an extension period of up to one year. During this extension period, the stakeholder workgroup shall meet at least quarterly, as agreed by the department and those members selected pursuant to paragraph (2).

(B) During the extension period, the stakeholder workgroup's activities may include assisting the department or Legislature, or both, to enact improvements to the ratesetting system.

(b) The department shall seek partnership with one or more independent, nonprofit groups or foundations, academic institutions, or governmental entities providing grants for health-related activities, to support stakeholder workgroup efforts.

(c) The department shall seek necessary legislative changes to implement the stakeholder workgroup's recommendations that the department determines are feasible to implement as part of the reauthorization of this article.

(d) The department may meet the intent of this article, as stated in subdivision (a) of Section 14126.02, by using the stakeholder workgroup's recommendations to design an evaluation of the effectiveness of the facility-specific ratesetting system established pursuant to Section 14126.023.

(e) Implementation and administration of this section is not dependent on the availability of foundation funding.

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